



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 24, 2023

IN THE MATTER OF:

Appeal Board No. 628736

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective March 25, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 22, 2023 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant has come forward with new evidence that was not available at the time of the hearing. The Board has determined that a further hearing should be held to consider this new evidence. At the remand hearing, the parties shall produce Luis Arciniega to testify and shall provide a phone number where he can be reached. Subject to any objections, the Judge shall take into evidence the notarized statement from Mr. Arciniega that the claimant has produced on appeal. The Judge shall question Mr. Arciniega with respect to the substance of the conversation that he had with the claimant regarding not wearing a mask while entering the condominium

premises. The Judge also shall question Mr. Arciniega with respect to whether

the claimant quit based on his not being granted a raise. The parties are hereby on notice that the Judge shall consider whether the claimant had good cause to quit based on his being ordered not to wear a mask. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary separation from employment without good cause, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of voluntary separation from employment without good cause, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER